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19 UNITED STATES DISTRICT COURT
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WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THE NEIMAN MARCUS GROUP, INC.;
BERGDORF GOODMAN, INC.;
AND NM NEVADA TRUST,

Plaintiffs,

vs.

DOTSTER, INC. A/K/A REVENUEDIRECT;
REGISTRARADS, INC.; AND SCOTT FISH,

Defendants.

NO. C06-5292RBL

**DECLARATION OF DAVID J. STEELE
IN SUPPORT OF PLAINTIFFS'
MOTION FOR PRELIMINARY
INJUNCTION**

DECLARATION OF DAVID J. STEELE

I, David J. Steele, declare as follows:

1. I am an attorney with the law firm of Christie, Parker & Hale, LLP, counsel of record for Plaintiffs The Neiman Marcus Group, Inc., Bergdorf Goodman, Inc. and NM Nevada Trust (collectively, "Plaintiffs"). The matters set forth below are of my personal knowledge and, if called as a witness, I would testify competently to each of the following facts.

2. In October 2006, I prepared a list of some of the domain names registered by Defendants which are identical or confusingly similar to the famous trade names, trademarks and

1 service marks NEIMAN-MARCUS, NEIMAN MARCUS and BERGDORF GOODMAN
 2 (collectively, "Plaintiffs' Famous Marks"). The list included the following 34 domain names:
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|-----------------------------------|------------------------|
| 4 1. bergdorfgoddman.com | 18. neimanns.com |
| 2 2. bergdorfgoodmon.com | 19. neimanscatalog.com |
| 3 3. bergdorfgoogman.com | 20. neimansjewlery.com |
| 4 4. bergerdorfgoodman.com | 21. neimenmarus.com |
| 5 5. bergmangoodman.com | 22. neimumarcus.com |
| 6 6. borgdorfgoodman.com | 23. nelmanmarcus.com |
| 7 7. emanmarcus.com | 24. nemammarcus.com |
| 8 8. marcusneimen.com | 25. nemimarcus.com |
| 9 9. neamannmarcus.com | 26. neminnmarcus.com |
| 10 10. nehmanmarcus.com | 27. nemninmarcus.com |
| 11 11. nehminmarcus.com | 28. neumanmarcos.com |
| 12 12. neimanmaracus.com | 29. neumenmarcus.com |
| 13 13. neimanmarcurs.com | 30. newmenmarcus.com |
| 14 14. neimanmarcuse.com | 31. nhminmarcus.com |
| 15 15. neimanmarcuslastchance.com | 32. niemanstores.com |
| 16 16. neimanmarisu.com | 33. ninemmarcus.com |
| 17. neimanmarqus.com | 34. niumanmarcus.com |

25
 26 3. I obtained the whois data for many of these domain names from the .com registry
 27 operator, and where available from the registrar, Dotster. For many of these confusingly similar
 28 domain names, Dotster fails to provide any whois data. For other confusingly similar domain
 29 names, Doster merely lists the registrant as "c/o the domain name" and does not list the name of
 30 the registrant. Whois data for many of these domain names (or, more accurately, the lack of
 31 whois data) is attached to Plaintiffs' First Amended and Supplemental Complaint as Exhibit 8,
 32 and is attached to this Declaration as Exhibit 1. The statement "No match for [domain name]"
 33 reflects the absence of any information regarding the name or address of the registrant of the
 34 domain name.
 35

36 4. In support of Plaintiffs' Original Complaint, I prepared a list of some of the
 37 domain names registered by Defendants which are identical or confusingly similar to other
 38 famous marks. Because of the large number of these domain names, I only included one famous
 39 mark for each letter of the alphabet (i.e., Abercrombie and Fitch, Bally's Total Fitness, Cingular
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1 Wireless, Disney, Expedia, etc.). This list of infringing domain names, which includes almost
 2 one thousand names, is attached to Plaintiffs' Original Complaint as Exhibit 6, and is attached to
 3 this Declaration as Exhibit 2.
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5. In support of Plaintiffs' Original Complaint, I viewed numerous websites
 6 available at domain names registered by Defendants which are confusingly similar to Plaintiffs'
 7 Famous Marks. Defendants hosted websites at most of these domain names which (1) displayed
 8 links featuring goods or services directly competitive with those sold or provided by Plaintiffs, a
 9 link that read "Offer to Buy This Domain," and (2) displayed pop-up advertisements. Clicking on
 10 the link that read "Offer to Buy This Domain" created an email addressed to
 11 domains@gmail.com. I prepared screen shots of each website and pop-up advertisement
 12 displayed. These screen shots were attached to Plaintiffs' Original Complaint as Exhibit 9 and
 13 Exhibit 10, and are attached to this Declaration as Exhibit 3 and Exhibit 4.
 14

15. In March 2006, two domain names owned by Defendants -- garacey.com and
 16 bergmangoodman.com -- were purchased. The purchaser corresponded by email with the seller,
 17 Defendant Scott Fish ("Fish"), an employee of Dotster. After receiving the initial email sent to
 18 the domains@gmail.com address, Fish then used the email address domains@revenuedirect.com.
 19 Copies of the correspondence regarding the purchase of garacey.com and bergmangoodman.com
 20 are attached to this Declaration as Exhibit 5 and Exhibit 6, respectively.
 21

22. Fish instructed that payments for the sale of the domain names could be sent via
 23 paypal or that a check could be made payable to "DOMAIN REGISTRATION" and sent to Fish
 24 at 8100 NE Parkway Drive, Suite 300, Vancouver, Washington 98662, which is the same address
 25 as Dotster. Although the check was made payable to DOMAIN REGISTRATION, the check was
 26 stamped with Dotster's banking stamp, including Dotster's bank account number, and deposited
 27 into Dotster's account. A copy of one payment check, with Dotster's account number redacted, is
 28 attached to this Declaration as Exhibit 7.
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1 8. On January 21, 2006, I wrote an email to Defendants' legal counsel, Ravi Puri,
 2 and informed him that Defendants' registration of neimanmarqus.com infringed The Neiman
 3 Marcus Group, Inc.'s rights. in the NEIMAN MARCUS mark. A copy of the January 21, 2006
 4 email is attached to this Declaration as Exhibit 8.
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7 9. On January 22, 2006, Mr. Puri replied to my email and (a) acknowledged The
 8 Neiman Marcus Group, Inc.'s trademark rights and (b) agreed to delete or transfer the
 9 neimanmarqus.com domain name to Plaintiffs. A copy of the January 22, 2006 email is attached
 10 to this Declaration as Exhibit 9.
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13 10. On January 23, 2006, Mr. Puri, in response to my questions, informed me by
 14 email that Dotster was not the registrant of the neimanmarqus.com domain name and that Dotster
 15 did not know the identity of the registrant. Mr. Puri's statement is inaccurate and misleading. A
 16 copy of the January 23, 2006 email is attached to this Declaration as Exhibit 10.
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19 11. After receiving notice on January 22, 2006, of The Neiman Marcus Group, Inc.'s
 20 trademark rights, Defendants continued registering or renewing domain names confusingly
 21 similar to those famous marks, including neamannmarcus.com; neimanmaracus.com;
 22 neimanmarcuse.com; neimanmarcuslastchance.com; neimanmarisu.com; neimanns.com;
 23 neimansjewelry.com; nemammarcus.com; nemninmarcus.com; neumanmarcos.com;
 24 neumenmarcos.com; newmenmarcus.com; ninemarcus.com; and emanmarcus.com.
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27 12. After being served with Plaintiffs' Original Complaint on June 1, 2006,
 28 Defendants continued registering domain names which are confusingly similar to Plaintiffs'
 29 Famous Marks. For example, on October 13, 2006, Defendants registered neimanscatalog.com
 30 and niemanstores.com.
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33 13. After being served with Plaintiffs' Original Complaint on June 1, 2006,
 34 Defendants also continued registering domain names which are confusingly similar to the
 35 famous marks listed in Exhibit 6 of Plaintiffs' Complaint (i.e., Abercrombie and Fitch, Bally's
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1 Total Fitness, Cingular Wireless Disney, Expedia, etc.). The following is a list of domain names
2 registered or renewed by Defendants, after receiving service of Plaintiffs' Original Complaint:
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6 aberconbiandfict.com
7 abercrumbieandfinch.com
8 ballyhealthspa.com
9 ballynutrient.com
10 disneyblockoutdates.com
11 disneycampground.com
12 disneychammle.com
13 disneychanelchanel.com
14 disneychanelsohotsummer.com
15 disneychannelauditions.com
16 disneychannelfathersday.com
17 disneychannelhotsummer.com
18 disneychannelnnel.com
19 disneychannelsohotsummer.com
20 disneychannel-sohotsummer.com
21 disneychannelssohotsummer.com
22 disneyfireworks.com
23 disneylandcaliforniaadventures.com
24 disneylandcruises.com
25 disneylandland.com
26 disneyporncollection.com
27 disneypreincess.com
28 disneysgrandcaliforniahotel.com
29 disneysohotsummer.com
30 disneyworldcampgrounds.com
31 expedee.com
32 expediance.com
33 google-satellite.com
34 googlesexoffender.com
35 googletrace.com
36 jcp-photo.com
37 marriop.com
38 marriotcourtyard.com
39 neimanscatalog.com
40 niemanstores.com
41 playboymanshen.com
42 randmcannly.com
43 searsesential.com
44 searsphot.com
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DECLARATION OF DAVID J. STEELE
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION- 4

Perkins Coie LLP
1120 NW Couch Street, 10th Floor
Portland, Oregon 97209
Phone: (503) 727-2000
Fax: (503) 727-2222

1 searspicturestudio.com
2 searsscratchanddent.com
3 toyotaofnorthampton.com
4 toyotarentals.com
5 toyotasoutheast.com
6 unitediar.com
7 walmartdistributioncenters.com
8 walmartexpress.com
9 xmdelphi.com
10 xmsatliteradio.com
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15 Copies of the registry whois data for each domain name is attached to this Declaration as Exhibit
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17 11. Registry whois data for .com domain names does not contain the contact data typically
18 provided by the registrar.
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20 14. As of October and November 2006, Defendants failed to provide any whois data
21 for many of the domain names they registered. Copies of the registry and registrar whois data for
22 some of the domain names which Defendants failed to provide any whois data for are attached to
23 this Declaration as Exhibit 12.
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28 15. For many of the domain names Defendants registered, Dotster merely lists the
29 registrant as "c/o the domain name" and does not list the actual name of the registrant. A copy of
30 the registry and registrar whois data for ballyhealthspa.com, one such example, is attached to this
31 Declaration as Exhibit 13.
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36 16. I was advised by counsel for Defendants Dotster and Scott Fish, Vincent V.
37 Carissimi, that "RegistrarAds, Inc." was the affiliate for whom Dotster registered the domain
38 names listed in the Complaint.
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42 17. On December 8, 2006, I printed sections 3.3.1.6 and 3.3.1.7 from the *Registrar*
43 *Accreditation Agreement*, which was available at <http://www.icann.org/registrar/ra-agreement->
44 17may01.htm. Copies of both sections are attached to this Declaration as Exhibit 14.
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DECLARATION OF DAVID J. STEELE
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION- 5

Perkins Coie LLP
1120 NW Couch Street, 10th Floor
Portland, Oregon 97209
Phone: (503) 727-2000
Fax: (503) 727-2222

1
2 I declare under penalty of perjury under the laws of the United States that the foregoing is
3 true and correct.
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7 Executed on December 8, 2006.
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David J. Steele

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DECLARATION OF DAVID J. STEELE
IN SUPPORT OF PLAINTIFFS' MOTION FOR
PRELIMINARY INJUNCTION- 6

Perkins Coie LLP
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Portland, Oregon 97209
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Fax: (503) 727-2222

CERTIFICATE OF SERVICE

On December 12, 2006, I caused to be served upon counsel of record, at the address stated below, via the method of service indicated, a true and correct copy of the following documents:

DECLARATION OF DAVID J. STEELE IN SUPPORT OF PLAINTIFFS' MOTION FOR PRELIMINARY INJUNCTION

Jamie C. Clausen	Via hand delivery
COZEN O'CONNOR	Via U.S. Mail, 1st Class, Postage Prepaid
1201 Third Avenue, Suite 5200	Via Overnight Delivery
Seattle, Washington 98101	Via Facsimile
Attorneys for Defendants	X Via E-filing
Robert W. Hayes	Via hand delivery
COZEN O'CONNOR	Via U.S. Mail, 1st Class, Postage Prepaid
1900 Market Street	Via Overnight Delivery
Philadelphia, Pennsylvania 19103	Via Facsimile
Attorneys for Defendants	X Via E-filing
Vincent V. Carissimi	Via hand delivery
Michael J. Leonard	Via U.S. Mail, 1st Class, Postage Prepaid
PEPPER HAMILTON LLP	Via Overnight Delivery
3000 Two Logan Square	Via Facsimile
Eighteenth and Arch Streets	X Via E-filing
Philadelphia, Pennsylvania 19103-2799	
Attorneys for Defendants	

I certify under penalty of perjury under the laws of the State of Oregon that the foregoing
is true and correct

DATED at Portland, Oregon, this 12th day of December, 2006.

s/ Sarah J. Crooks, WSBA No. 97151
SCrooks@perkinscoie.com
Perkins Coie LLP
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Atorneys for Plaintiff
The Neiman Marcus Group, Inc., Bergdorf Goodman, Inc., NM Nevada Trust

CERTIFICATE OF SERVICE - 1

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